1950

File No. S.DWR 10/50

Legal DEPARTMENT
A BRANCH

Subject:-- Dharwar Suit

Institution of suit against Shri S. N. Chinmulgund, Proprietor of Shri Krishna Rice Mill at Bommanhalli District Dharwar, for recovery of Rs. 64-13-0 being the balance of a loan of Rs. 2,000 advanced to him for repairing his mill and interest thereon.

Civil Suit No. 165 of 1950

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S.DWR 10/50

File No.

S.DWR 10/5

C O N T E N T S.

Legal Department File No. S. Dwr. 10/50.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Dharwar

C. S. No. 69 of 1950.

Institution of a suit against Shri S.N. Chinmulgund, Proprietor of Shri Krishna Rice Mill at Bommanhulli District Dharwar, for recovery of Rs. 364-13-0 being the balance of a loan of Rs. 2,000 advanced to him for repairing his mill and interest thereon.

The State of Bombay - plff.

V/s

Shri S. N. Chinmulgund deft.

1-176.

On receipt of application from Shri S.N. Chinmulgund, proprietor, the Shree Krishna Rice Mills, Bomannhalli, a sum of Rs.2000/- was advanced to him in January 1946, by the Collector of Dharwar under P.L. Account for carrying out the repairs of his Mill building under conditions laid down in the office order No .W.A.R.A.C./1473 dat 22-12-45. The construction or repairs to the mill building were such as to give no exclusive possession of any part of it in the custody of Government where paddy could be stored and kept under lock and key. Paddy was issued to him as well as the others for milling purposes from February 1947 to August 1947. The stocks were stored in his mill during the above period.

2) It was noticed by the Dist. Distribution Supdt., that the amount advanced to the party was not utilised for the purposes for which it was advanced and hence the Collector Dharwar ordered the recovery of the amount from the party. Thereafter the party credited Rs.1635-8-0 and has refused to pay the remaining sum of Rs.364-13-0 and the interest accuring thereon, on the grounds that he should be paid the rent for the period of storage of paddy in his mill that is February 1947 to August 1947. According to the Mamlatdar's report the party is not entitled for any rent as no portion of the building was exclusively used by Government for storing foodgrains and that whatever paddy was stored for some time i.e. from February 1947 to August 1947 was issued to him for

rule for obtaining the orders. These papers are now forwarded by the Collector for obtaining the necessary sanction of the R.L.A.

In view of the above the case may be forwarded to R.L.A. for ~~advice as to whether the Civil Suit against Shree S.N. Chinmulgund can be successfully launched for the recovery of Rs.364-13-0.~~ according sanction to the filing of the suit

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L. D.
22 MAY 1950
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Please U.O.
& R.L.A.
22/5/50.

22/5

ANNEX I
DIARY
Diary No. 8831
Dated 23-5-50
Sub. A

milling purposes.

He has passed a registered deed in January 1946 and he has mortaged without ~~parm~~ possession the mill building in favour of the Collector of Dharwar. In it he has agreed that he would after retaining sufficient space for his milling purposes rent out the remaining portion of his mill premises for storage of foodgrains and that such rent due from the Government should be adjusted against the amount advanced to him. According to the Collector there is no stipulation about handing over exclusive possession of a portion of his mill and whatever paddy was stored there was issued to him for milling purposes and not for storage purposes and hence no rent was fixed. According to the opinion of the Dist.Govt. Pleader (Page 127) a Civil Suit can be launched successfully for the recovery of the amount with interest against Shree Chimmulgund. But he feels he may file a counter suit for recovery of rent from Government.

In this case the opinion of the R.L.A. may please be seen at page 115 ante.

The letter addressed by the Collector of Dharwar may be perused at page 145 ante.

(The whole correspondence regarding the recovery of Rs.364-13-0 from Shree S.N.Chinmulgund is at pages from 1 to 144)

The Collector has proposed to file a civil suit and the plaint drawn by the Sub-Government Pleader, Hubli as required by rule 108 of the Law officers Rules the Sub-Govt.Pleader submitted the papers to R.L.A. for sanction but R.L.A. returned the papers informing the pleader that the Collector, Dharwar should submit the report to the Govt. in the Legal Department as per rule 109 of the Law Officer's

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Hubli Civil Suit.

The proposed suit is to be filed against Shri Chinmulgund for recovery of Rs.364-13-0 due from him out of a loan of Rs. 2000/- made to him by the District Magistrate, Dharwar. In his opinion No. G/174 dated 26th Feb. 1949, the R.L.A. has advised that a suit for the recovery of the sum would be competent. A Memorandum of Instructions is accordingly prepared and put up on the following pages which is for approval. A draft plaint is also put which may also be approved.

x slip C, Rlo.CPC/49

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RW 6/6/50

~~R.L.A.~~ A.C.R may please peruse
of this case
6/6

Seen CSP

RK 6/6

Seen CSD

RECEIVED IN C. S. D.
on 7/6 1950

RECEIVED IN C. S. D.
on
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x No. 7703
d. 7-6-1950.

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In the Court of the Civil Judge,

Senior Division, Hubli.

State of Bombay --- Plaintiff.

v.

Shri Shrinivas Narayan Chinmulgund, age etc. -- Defendant.

Claim Rs.

The plaintiff abovenamed states as follows:-

1) The defendant is the proprietor of Shri Krishna Rice Mill at Bommanalli Taluka Hanagal in Dharwar District. The boundaries and measurements of the Mill building are as follows:-

To east and north is the Government Road and open space/ To west and south is the open space of Mahadevappa Iligar. It measures 75 feet east west and 53 feet north south.

2) The defendant borrowed Rs.2000/- from the plaintiff for repairing the said mill. The amount was sanctioned by the Collector of Dharwar on 22-12-1945 subject to the following conditions, namely :-

(a) that the advance amount of Rs. 2000/- would be charged with interest at 4 p.c. ;

(b) that after repairs the mill building described above would be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain;

(c) that the amount payable as rent would be adjusted towards the interest and principal of the loan;

(d) that the amount remaining after adjustment as shown in clause (e) , should be refunded within one year, from the receipt of the amount, or before the supply scheme is closed, whichever event takes place earlier.

(e) that the bond embodying these conditions should be registered at the defendant's costs.

3) The defendant having agreed to the above conditions passed a registered deed on 12-1-1946.

4) The defendant did not carry out suitable repairs and his premises were not suitable for use as a go-down, and therefore they were never taken on lease by Govt. or used for storage purposes.

5) The defendant has repaid a sum of Rs.1635-3-0 and is still in arrears of Rs.364-13-0 plus interest thereon which he has not so far paid although a notice was issued to him on 26-6-1948. Hence this suit.

6) The defendant thus owes Govt :

Rs. 364-13-0 ---- balance amount

Rs. 35-0-0 ---- Interest.

Rs. 399-13-0 Total.

7) The suit claim for the purpose of court-fees, pleader's fees, and jurisdiction of the Court is Rs. 399-13-0 only.

8) The cause of action arose on 12-1-1947.

9) This court has jurisdiction to try this suit as the defendant resides in the jurisdiction of this court, and as the course of action also arose in the jurisdiction of this court. The mortgaged property is also in the jurisdiction of this court.

10) Plaintiff prays that defendant be ordered to pay the claim amount with future interest and costs, failing which the amount be realised by selling the mortgaged property. In case the mortgaged property is not sufficient to cover the claim amount, the defendant be held personally liable to make good the deficit amount.

Plaintiff be permitted to amend the plaint if and when necessary.

Sub
~~District~~ Government Pleader.

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I, ---------- ~~District~~ Sub Government Pleader, ---------- , do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This verification is made at ----- on the -------- day of ---------- 1950.

~~District~~ Sub Government Pleader,
Hubli.

Suits :

Dharwar (Hubli).
For recovery of Rs. 364-13-0 from the defendant.

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GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9509.

Bombay Castle, 7th July 1950.

Letter from the District Magistrate, Dharwar, No. WAR-AC/Chinmulgund 1473, dated the 13th December 1949—Forwarding papers and requesting sanction to the institution of a suit against Shri S. N. Chinmulgund, Proprietor of Shri Krishna Rice Mill at Bommanhalli, district Dharwar, for recovery of Rs. 364-13-0 being the balance of a loan of Rs. 2,000 advanced to him for repairing his mill and interest thereon.

Memorandum to the Sub-Government Pleader, Hubli, No. 7952, dated the 13th June 1950—Forwarding a copy of the Memorandum of Instructions together with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the institution of a suit in the Court of the Civil Judge, Senior Division, Hubli, against Shri S. N. Chinmulgund, Proprietor of Shri Krishna Rice Mill at Bommanhalli, district Dharwar, for recovery of Rs. 364-13-0 with interest thereon at 4 per cent. per annum on the lines of accompanying Memorandum of Instructions.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Issued 22/8/50

AXB Leg H 73—i

Original

[P.T.O.

To

*The Civil Supplies Department,
*The District Magistrate, Dharwar,
The Sub-Government Pleader, Hubli (with two copies of the Memorandum of Instructions).

* With a copy of the Memorandum of Instructions.

No. of 1950.

Copy forwarded for information and guidance to

Sabitad - after issue —
File in S. Dharwar - 1/50

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MEMORANDUM OF INSTRUCTIONS.

This is a proposal to file a civil suit against Shri Shrinivas Narayan Chinmulgund, proprietor of Shri Krishna Rice Mill at Bommanhalli in Dharwar District for recovery of Rs. 364-13-0 (with interest thereon) being the balance of the loan of Rs. 2,000 advanced to him for repairing his mill.

2. On 20th November 1945, Shri S. N. Chinmulgund made an application to the Collector and District Magistrate, Dharwar, requesting a loan of Rs. 2,000 for repairs to his mill. His application was accepted and under his order No. WAR-AC 1473, dated the 22nd December 1945, the District Magistrate, Dharwar, sanctioned an advance of Rs. 2,000 to the applicant subject to the following conditions :—

(*i*) That the advance will be charged with interest at 4 per cent. per annum.

(*ii*) After repairs the mill building will be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain.

(*iii*) The amount payable as rent will be adjusted towards the interest and principal of the loan.

(*iv*) That the amount remaining after adjustment as shown in clause (*iii*) should be refunded within one year from the receipt of the advance or before the supply scheme is closed whichever event takes place earlier.

(*v*) That the bond embodying these conditions should be registered at the applicant's cost.

3. On 12th January 1946 a registered deed was executed by Shri Chinmulgund whereunder the building was mortgaged to Government and it was also agreed to lease a portion of it to Government for godown purposes. The construction of the building was not suitable for godown as foodgrains could not be kept there under lock and key and therefore the premises were never used for that purposes by Government. Shri Chinmulgund has repaid Government a sum of Rs. 1,635-3-0 in two instalments but he is refusing to pay the balance of Rs. 364-13-0 with interest thereon on the ground that this amount should be adjusted against the rent which Government owes him for storage of paddy in his mill from 21st February 1947 to 19th August 1947. This paddy was not stored in the mill but was issued to him for milling purposes and as such no rent is payable. As Shri Chinmulgund is unwilling to pay the balance due it has become necessary to file the present suit.

4. The suit should be filed in the court of the Civil Judge, Senior Division, Hubli. The state of Bombay will be the plaintiff while Shri S. N. Chinmulgund will be the defendant. The claim should be for a sum of Rs. 364-13-0 plus interest thereon at 4 per cent. per annum up to the date of

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the suit and future interest at the same rate till satisfaction of the decree. The Court should be requested to pass a decree against the defendant and on his failure to pay to order the amount to be realised by sale of the mortgaged property and for such other relief as may be deemed expedient. The Subordinate Government Pleader should lead such oral and documentary evidence as may be relevant and necessary. A draft of the plaint to be filed in the Court is enclosed.

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L. No. 86 dated 16-8-1951.
Office of the Sub-Govt.Pleader,Hubli.

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To

The Remembrancer of Legal Affairs,

Bombay.

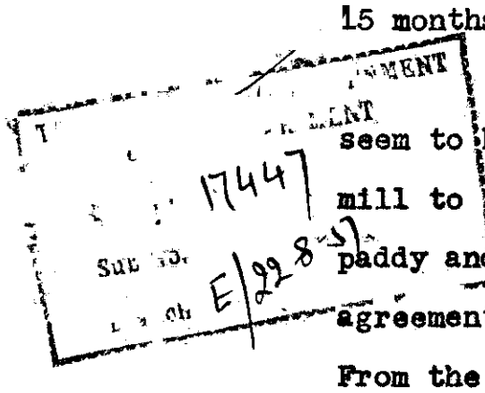
Subject :- Decision partially adverse to Government in L. C. Suit No. 169/50 of the Hubli Court.

Reference : Your office No. 7952 of 13th June 1950.

Sir,

With reference to the above suit I have to submit as under : -

The suit has been decreed for Rs. 109/13/0 though the amount claimed in the suit by the Government was Rs. 409/13/0. In disallowing the claim of Rs. 300/- the court has held that the amount has been satisfied by way of rent due to deft by the - Government for having used his Rice Mill as a Godown for about 15 months for storing paddy and rice.



As per terms of the mortgage deed, the deft does not seem to have effected necessary repairs and handed over the mill to the Government for using it as a godown for storing paddy and rice . There is no evidence of repairs nor of any agreement of rent between the plaintiff and the defendant . From the godown registers and the Rent Register, the Court draws an inference, that the Government must have used the Mill for storing paddy and rice, as the name of the defendant's mill appears in both the registers. It was at the request of the defendant that the paddy and rice was kept there for milling purpose and not for storing the same as contended by the defendant. Moreover the mill was not given exclusive possession of to the plaintiff Govt. by the Deft. Hence the decision seems to be erroneous and an appeal should be filed in the case

I shall submit the copies of judgment and decree as soon as I get them. I have applied for the same to-day.

Yours faithfully,

Sub-Government Pleader,Hubli.

L.D

Submitted for information

The Sub-Govt Pleader Hubli states that the Suit No. 169 of 1950 filed by the Bombay State against shri S.N. Chinnulgund has been decreed for Rs-109-13-0 though the amount claimed in the Suit by Govt. was Rs. 409-13-0 The Court has disallowed the claim of Rs. 300/ holding that the amount has been satisfied by way of rent due to Defdt by Government for having used his Rice Mill as a Godown for about 5 months for storing paddy and rice. The Sub.G.P. is of opinion that the decision of the Court seems to be erroneous and appeal should be filed in the case. The Sub. Govt. Pleader has not given the date when the Suit was decided The Sub. G.P. may be informed that he should submit his opinion re: filing of appeal through the Collector of Dharwar who in turn will submit his report to Govt. (Vide rule 131 of L.O. Rs)

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ASO(M) for information

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Received on 16/6/50.

Registered on 16/6/50.

Decided on 14/8/51.

Duration : 1 year, 1 month and 28 days.

In the Court of the Civil Judge,Senior Division,

at Hubli. Ex. 47.

Pleaders :- L. C. Civil Suit No. 169 of 1950.

Shri.Kothad. B.R. State of Bombay.....Plaintiff.

Versus.

Bhandivad. V.N. Shri. Krishnaa Narayan Chinnaigund, age 43, occupation trade, residing in Kangal Taluka Kangal.....Defendant.

Claim Rs. 400-12-0.

The Plaintiff sues to recover Rs. 400/12/0 and costs of the suit and future interest from the deft and if he fails to pay the same, to get the amount by sale of the mortgaged property and to get the balance if any, from the person of the defendant.

He states that the defendant is the proprietor of Shri Krishna Rice Mill at Kanamahalli Taluka Kangal District Dharwar, and he borrowed Rs. 2000/- from the plaintiff for repairing the suit Mill and the amount was sanctioned by the Collector of Dharwar on 22-12-1945 subject to the conditions that the advance amount would be charged with interest at 4 per cent per year and that after repairs the Mill buildings would be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain and that the amount payable as rent would be adjusted towards the interest and principal of the loan and that the amount remaining after adjustment would be refunded within one year from the receipt

of the amount or before the supply scheme was closed whichever event took place earlier and that the bond embodying these conditions should be registered at the cost of the defendant and the deft agreed to these conditions and executed a registered deed of mortgage regarding the suit property on 12-1-46. The plff says that the deft did not carry out suitable repairs and his premises were not suitable for use as a godown and therefore they were never taken on lease by Government or used for storage purposes and that the deft repaid a sum of Rs. 1635-3-0 and he was to pay Rs. 364/1/3 and interest and he did not do so although a notice was given to him on 26/6/1948 and therefore the plff has filed the suit to recover the amount of Rs. 409/13/0 and costs and future interest and the cause of action arose on 12-1-1947.

The defendant states at Ex. 8 that he executed a mortgage deed to plff regarding the Mill belonging to him at Bommanhalli called the "Shri Krishna Rice Mill". He says that it was agreed between the parties that the Government were to use the building for keeping bags and the amount of rent to be paid by them was to be deducted in the amount of the mortgage and the Government have kept rice and paddy bags belonging to them in the building in the years 1948 and 1947 and the Government have used the building and therefore they are bound to pay the rent to the deft, and that amount is in excess of what the deft is to pay plff as stated in the plaint and therefore he is not to pay any money to the Plaintiff. He states that he effected repairs in the building and the Mill was used as a godown by Government and it was fit to be used as a godown and it is not a fact that the Govt. did not use the building as a godown. He says that it is not a fact that the building was not useful for keeping bags of Government. He says that about 8000 bags of paddy belonging to Government ~~was~~ were milled in his Mill in the year 1946 and the Government used the property for storing those bags and that in the year 1947 about 1500 bags of paddy were milled and the Government used the property for keeping those bags there. He says that he applied to the Collector, Dharwar regarding rent of the building and he did not take the necessary steps in the matter. He says that the facts stated above should be considered and the suit

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be dismissed with costs.

On these contentions the following issues are raised:

1. Whether deft proves that he effected the necessary repairs as per the mortgage deed ?
2. Does he prove that he had let the godown to the Government for storage of grain ?
3. Whether deft can plead satisfaction ?
4. If so, is the alleged satisfaction proved ?
5. What if any, is due to plaintiff ?
6. What decree ?

Answers :-

1:- Yes, 2:- Yes. 3:- Yes. 4:- 300 rupees.

5 :- Rs. 100/13/0. 6:- As given below.

Reasons.

The statements of Shrinivas Ex. 19 and Mallappa Ex. 33 are recorded in the case for the defendant and the plff has not adduced any oral evidence.

The admitted facts of the case are that the deft is the owner of Shri. Krishna Rice Mill Bommanhalli and he executed a mortgage deed regarding that property on 12-1-36 to the plff for Rs. 2000/-. It is stated in the deed Ex. 33 that deft should pay interest at 4 per cent per year on the amount and the amount was to be paid within one year from the date of the deed and the deft was to be in possession of the property and after the property was repaired the deft was to retain a portion of the building sufficient for the mill and he was to give the remaining property to Government for storing corn or rent and the Government was to deduct the amount of rent in the amount due to Government for principal and interest and the deft agreed to pay the balance within the period agreed between the parties. It was further stated there that if the supply scheme was given up by Government earlier the deft was to pay the amount due to Government when that scheme was closed and if any money remained due to be paid to Government the Government was to sell the property and to recover the dues and if a balance still remained the deft agreed to pay the same on his personal responsibility.

The case of the deft is that he repaired the building and gave it to Government for storing corn and that a large quantity of corn was kept in the suit building in the year 1946 and for about three months in the year 1947 and that rent for 15 months was due to him and the rent was not fixed by Govt. and therefore the amount due to him was more than what the Government claimed in this suit and therefore the suit be dismissed with costs. It is stated for Government that the deft did not effect the necessary repairs and therefore the building was not fit to be used as a godown and therefore the Government did not use the building as a godown and after deducting the amount repaid by the deft the amount as claimed is due from the deft and therefore they gave a notice to the deft and the suit was filed. The notice is at Ex. 39. The deft called upon the Government to produce certain books kept by Government and they are at Exs. 41, 44, 43, 42 and 46. Ex. 41 is from 1-10-45 and therein we find that accounts of big paddy, small paddy, big rice, small rice and broken rice are written. There are certain bills stated there and the suit mill is also shown there. The quantity of big paddy kept in suit property on 18-1-46 was 2697 bags and on 28/8/46 the bags were 143 and 121 lbs. As regards the small paddy the stock on 12-1-46 was 367 bags and on 14-10-46 it was 5 bags. As regards big rice the stock was 20 bags on 18/1/46 and it was 330 bags on 16/10/46. The stock of small rice was 62 bags on 6/6/46 and 2 bags on 18/10/46 The stock of broken rice was 1 bag on 18/1/46 and 29 bags on 28/8/46 The maximum number of bags of big paddy as mentioned in this book was 3716 and it was on 15/3/46. In this book the suit godown is styled as K.N.K. The maximum quantity of small paddy as seen from this book was 658 bags. The maximum quantity of big rice in Ex. 41 was 1682 bags on 13/8/46. The maximum quantity of small rice in Ex. 41 is 329 bags on 16/6/46 and the maximum quantity of broken rice 29 bags. Ex. 41 shows that big paddy was kept in suit godown by Government from 1-10-45 to 28-8-46 and small paddy from 1-10-45 to 14-10-46 and big rice from 18-1-46 to 16-10-46 and small rice from 6/6/46 to 18/10/46 and broken rice from 18/1/46 to 28/8/46 . There are varying quantities

of these articles during the period mentioned against every one of the items and that shows that paddy was brought to the suit godown and it was kept there for a pretty long time and it was milled and the rice was also kept there for a pretty long time. Exs. 42 to 44 are for the year 1947 and therein the suit godown is styled as B. M. 2. The stock of big paddy on 29-11-46 was 6 bags and it was 50 bags on 7/2/47 and the stock of small paddy was 2 bags on 9/12/46 and 42 bags on 2/3/47. The maximum number of bags of big paddy was 925 on 20/2/47 and the maximum number of small paddy bags was 192 on 23-2-47. The accounts for big paddy and small paddy are written in Ex. 44. Ex. 43 is regarding big and small rice. On 16/12/46 there were 39 bags of big rice and on 16/3/47 the stock was 231 lbs. As regards small rice the stock on 10/1/47 was 42 bags and on 22-3-47, 123 lbs.

Ex. 52 shows that it was kept for broken rice and bran and on 26-12-46 the stock in the suit Mill of broken rice was 57 bags and on 8-3-47 it was 23 bags and on 23-3-47 there was no stock. There was no stock of small rice and big rice on 23-3-47 .

Ex. 46 is the Taluka Register of rents regarding godowns in the Taluka. At serial No. 12 the suit godown is mentioned. The fourth column has got the heading "Rent sanctioned" and as against the suit mill no figures are mentioned . That shows that the Collector had not fixed any rent for the building. As the name of the suit building is mentioned in this register it is clear that the suit property was taken up by Government on rent but the rent was regarding the same was not fixed between the parties. The register shows that the rent of various properties mentioned therein varied from Rs. 2/- per month to Rs. 60/- per month. It is stated for the defendant that the rent of the suit property should be held at Rs. 30/- per month and as the property was used by Government for 15 months it should be held that the defendant was entitled to get Rs.450 from Government and as the suit claim is for lesser amount the suit should be dismissed. It is stated for the Plaintiff that the defendant used to take a large number of paddy bags for

milling and as he could mill only a few bags per day it was necessary for him to keep a large number of bags in stock and therefore it cannot be said that the plaintiff took up the suit property on lease . It is stated for the defendant relying on Exs. 41 to 44 and Ex. 46 that the plaintiff had kept a large quantity of articles belonging to Government in the suit - building and that it is not possible for any person to keep so many bags for such a long time if the plff had not taken up the property on lease . It is also seen that the property is mentioned in the Rent Register Ex. 46 and that proves conclusively that the property was leased by defendant to plaintiff . It is stated for the plaintiff that the defendant was to effect repairs and he was to keep the portion required for his mill for himself and he was to give the remaining site to the plaintiff for storing corn and that the defendant did not separate the two portions. It is stated for deft that the suit property is a big hall wherein there is the mill on one side leaving the remaining portion as open site where it appears the articles were kept. It is no-where stated in the mortgage deed Ex. 38 that there should be a partition wall between the portion occupied by the mill and the portion to be used as a godown. The Government have been keeping their articles in the suit property all along and they never stated to the deft that he did not effect repairs to the suit property. Therefore I find that the defendant effected the necessary repairs and that the deft leased the godown to Government for storing grain and that the defendant can plead satisfaction because it is stated in the mortgage deed Ex. 38 that the rent of the suit property was to be deducted in the amount of principal and interest. It is in evidence that the plff stored corn etc. in the suit property for 15 months and therefore the defendant is entitled to claim rent for that period . The ordinary method of fixing the rents by Government is to approach the P.W.D. authorities to say as to what would be the reasonable rent regarding the building to be taken up on hire. In the present case it does not appear that the Collector or other Officer of Government followed such a course and he has not fixed the rent for the suit property. The plff has not adduced any oral evidence in the case.~~and~~ The mortgage deed -

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shows that the suit property was 73 ft. by 53 ft. including the walls . In this ~~xxxxxx~~ a portion was occupied by the Mill. Therefore I think it reasonable to hold that the reasonable rent of the property would be Rs. 20/- per month and that the amount of rent due to the defendant would be Rs. 300/- and that deducting this amount the amount due to plaintiff would be Rs. 109/13/0

Order.

It is declared that the plaintiff is entitled to recover Rs. 109/13/0 and proportionate costs of the suit from the defendant who shall pay future interest at 4 per cent per year on the amount of Rs. 109/13/0 or the unpaid part thereof from date of suit till realisation Time for 6 months is allowed to the defendant to pay the amount. A preliminary decree for sale should be drawn up. The defendant shall bear his costs .

14-8-51. Sd/- B.A.Chougule.

Civil Judge, S. D.

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Preliminary decree for sale Ex. 48.

In the Court of the Civil Judge, Senior Division,

at Hubli. Ex. 48.

L. C. Suit No. 169 of 1950.

Plaintiff :- State of Bombay.

Versus.

Defendant :- Shri. Shriniwas Narayan Chinmulgund, age 48, occupation trade, residing at Hangal Taluka Hangal.

Claim Rs. 409/13/0.

The abovenamed plaintiff states as under : -

1. The deft is the proprietor of Sri. Krishna Rice Mill at Bammanhalli Taluka Hangal in Dharwar District the boundaries and measurements of the mill building are as described in the last Schedul

2. The deft borrowed Rs. 2000/- from the plff for repairing the said mill. The amount was sanctioned by Collector of Dharwar on 22-12-1945 subject to the following conditions namely (a) that the advance amount of Rs. 2000/- would be charged with interest at 4 % , (b) That after repairs the mill buiding described above would be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain (c) that the amount payable as rent would be adjusted towards the interest and principal of the loan (d) that the amount remaining after adjustment as shown in clause (c) should be refunded within one year from the receipt of the amount, or before the supply scheme is closed whichever event takes place earlier (e) that the bond embodying these conditions should be registered at deft's costs

3. The deft having agreed to the above conditions

passed a registered deed on 12-1-1946 .

4. The deft did not carry out suitable repairs and his premises were not suitable for use as godown and therefore they were never taken on lease by Government or used for storage purposes .

5. The deft is repaid the amount Rs. 1635/3/0 and is still in arrears of Rs. 364/13/0 plus interest thereon which he has not so far paid although a notice was issued to him on 26/6/1948.

6. The cause of action arose on 12-1-47.

7. Plaintiff prays that the balance amount Rs. 364/13/0 and interest Rs. 45/- with future interest and costs be ordered to be paid from deft, failing which the amount be realised by selling the mortgaged property. In case the mortgaged property is not sufficient to recover the claim amount, the deft be held personally liable to make good the deficit amount.

This suit coming on this day the 14th August 1951 it is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated upto this 16th June 1950 is the sum of Rs. 109/13/0 for principal and interest thereon, and the sum of Rs. 36/9/0 for the costs of the suit awarded to the plaintiff making in all the sum of Rs. 146/6/0.

2) And it is hereby ordered and decreed as - follows :

i) that the deft to pay into court on or before six months from today or any later date up to which time for payment may be extended by the court the said sum of Rs. 146/6/0.

ii) that on such payment and on payment thereafter before such date as the court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 4, of Order XXXIV of the first Schedule to C.P.C. 1908, the plff shall bring into court all documents in the possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the deft or to such person as he appoints, and the plff shall if so required

#5 29 17

reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the deft quit and peaceable possession of the said property .

3) And it is hereby further ordered and decreed that, in default of payment as aforesaid the plff may apply to the court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or the sufficient thereof shall be directed to be sold, and for the purposes of such sale, the plff shall produce before the court or such officer as it appoints all documents in his possession, of the said property

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paidx into court and shall be duly applid in payment of the amount payable to the plff under this decree, and under any further orders that may be passed in this suit and in payment of any amount which the court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs,charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under Rule 11 of Order 34 of the first schedule of the C.P.C. 1908, and that the balance mf if any shall be paid to the deft or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money is realised by such sale shall not be sufficient for payment in full of the amount payable to the plff as aforesaid, the plff shall be at liberty to apply for a personal decree against the deft for the amount of the balance and that the parties are at liberty to apply to the court from time to time as they may have occasion, and on such application or otherwise the court may give such directions as it thinks fit.

Schedule.

Description of the mortgaged property.~~the~~

The boundaries and measurements of the mill building situated at Bammanhalli taluka Hangal are as follows

To east and North is the Govt. road and open space, to east and south is the open space of Mahadevappa Illiger. It measures 75 feet ~~xxx~~ east west and 53 feet north south.

Bill of costs.

costs of plaintiff.		Costs of defendant.	
Stamps for plaint Ex.1.	38/7/0.	Stamps for vakalat Ex.5.	0/10/0.
" for process Ex. 1.	1/4/0.	"for applications Exs. 6, 20, 23, 25, 27, 30, 33.	4/6/0.
Pleader's fees on Rs.409/13/0.	20/8/0.	" for processes Ex.15, 20, 27, 30.	6/14/0.
	60/3/0.	Takidâ Ex. 31.	1/0/0.
Stamps for Ex.1 disallowed.	28/2/0.	Pleader's fees on Rs. 409/13/0.	20/8/0.
Pleader's fees disallowed.	5/8/0.		33/6/0.
Balance	26/9/0.	Applications disallowed.Exs. 6,23, 25, 27, 30,33.	3/12/0.
		Balance.	29/10/0.

Given under my hand and Seal of this court on 14th August 1951.

Sd/-P.S.Kulkarni.
Karkun.

(Seal). Sd/-B.A.Chougule
Civil Judge, S. D.
23/8/51.

Pleader for plff. Sd/-B.R.Mathad.
S.G.P.
Pleader for deft. Sd/-V.N.Bhandiwad.
Pl.

22/10 Ch.

10/50

31

Subject :- Suit against Shri.S.N.Chinmulgund, Proprietor of ShriKrishna Rice Mills, at Bammanalli, for recovery of Rs. 364-13-0.

47

No.WARAC/Chinmulgund/1473.
Dharwar. 15th Oct,1951.

To

The Secretary to Government,
in the Legal Department,
Bombay.

Reference :- Govt.Resolution (Legal Dept. No.9509,date 7th July,1950, according sanction to the institution of a suit in the Court of the Civil Judge, Senior Division,Hubli,against Shri.S.N. Chinmulgund, Proprietor of ShriKrishna Rice Mills,Bammanalli, for Rs.364-13-0.

S Ch. 16/10

As per instructions contained in the above said Government Resolution, a suit was filed in the Court of the Civil Judge, Senior Division Hubli, for recovery of the amount of Rs.364-13-0 from Shri.S.N.Chinmulgund. The said suit was partially decreed in favour of Government and one part of the claim amount was allowed by the Civil Judge, Senior Division,Hubli. Since the Sub-Government Pleader of Hubli, recommended to prefer an appeal against the order of the said court, the District Government Pleader was requested under this office No.S.A.O./Chinmulgund of 13.9.1951, to intimate whether the appeal could be successfully conducted. The District Government Pleader intimated under his letter No.868/21-9-1951, that the appeal could be successfully conducted since the Lower Court failed to appreciate the evidence on record. A copy of the letter is enclosed for favour of perusal. Further the District Government Pleader, informed that the last date for filing the appeal was due on 27.9.1951

P.T.O.

For the reasons mentioned in paras 2 & 3 of the letter No.868/21.9.1951, from the Dist. Government Pleader, it was thought adviseable to prefer an appeal against the order passed by the Civil Judge, Senior Division, Hubli. Accordingly, the District Government Pleader was instructed to file an appeal against the Judgement and decree in L.C.Suit No.169 of 1950 of Hubli Court, in the Court of the District Judge, Dharwar, on 26th Sept,1951. A copy of the appeal memo filed by the District Government Pleader is also enclosed, for favour of perusal. The District Government Pleader now informs under his letter No.915 of 5th Oct,1951, to obtain sanction to the institution of appeal which has already been filed by him, under rule 132 of the Law Officer's Rules.

Under these circumstances, I request you to kindly accord sanction to the institution of appeal, already filed by the District Government Pleader in the court of the District Judge, Dharwar, against Shri.S.N.Chinmulgund, Prioprietor of ShriKrishna Rice Mills, for Rs.300/-

o.c.signed
by Collector.

for Collector of Dharwar.

b. Pl. see above letter from the Coll of Dharwar.
The appeal has already been filed. In the circumstances we may give formal sanction for the same and issue a S.R.

22/10.
Addl. Sec'y

22/10
S.A.S.

Secy.(Jud.)
22/10/51

33-49

Copy of letter No.915, dated 5th Oct,1951, from The District Government Pleader,Dharwar, addressed to the Collector of Dharwar.

...

Subject :- Appeal against the judgement and decre in L.C.Suit No.169 of 1950 of Hubli Court. R.L.A's Memo.No.7952, dated 13.6.1950.

With reference to your No;nil, dated 25.9.1951, I have the honour to inform you that I have filed the appeal in the District Court, Dharwar on 26.9.51 Copy of the memorandum of appeal is enclosed to the case papers which are sent herewith. You are nowx requested to move the Government in the Legal Department to accord sanction to the institution of appeal whihh is already filed under rule 132 of the Law Officer's Rules. The appeal is filed in anticipation of the sanction from the Government to avoid the bar of limitation.

b.

5133

Copy of letter No.868, dated 21st Sept,1951, from The District Government Pleader,Dharwar addressed to the Collector of Dharwar.

....

Subject :- L.C.Suit No.169 of 1950 on the file of Civil Judge,Senior Division, Hubli. against Shri.S.N.Chinmulgund.

With reference to your No.S.A.O.Chinmulgund,dated 17.9.1951, I have the honour to report as under :-

The Court has passed a preliminary decree on 14.8.1951. The Sub-Government Pleader,Hubli, has rightly recommended to prefer an appeal from this decree. The last date for filing this appeal is on 27.9.1951. The appeal can be successfully conducted for the following reasons.

The Court has wrongly disallowed the plaintiffis claim to the extent of Rs.300/-. The Court has failed to appreciate the evidence on record. There is no evidence to show that the suit mill was repaired and was given exclusive possession to Government. The condition in the mortgage bond Exh.38 was that after effecting repairs a portion of the mill would be let out to Government for storage of grain. The defedant has never observed this condition and he did not let out any portion of his mill to Government. There is no reliable evidence also to show that the same was ever let out to Government. Inspite of this, the Cou has made out a new case in the judgement for the defendant, and fixed the rent at Rs.20/- per month arbitrarily. There is no evidence to show that k defendant's mill would fetch an amount of Rs.20/-pe month.

The defendant has admitted at Exh.40 the liabili of the claim of Rs.664-13-0 and has paid Rs.300/- o of this amount subsequently. Exh.40 is the statemen of defendant before the Mamlatdar of Hangal dated 6.8.1948 and is signed by himself. The Court was wrong in not referring to this important document. The Court has also not taken into consideration tha defendant kept quiet when the Collector demanded th amount of Rs.364-13-0 by a notice dated 26.8.1948.

The Court has mis-construed and ill-conceived Exh.64 the Taluka Register of rents and Exh.52 the Stock Register. The stock register does not show th mill was used for storage. Paddy might have been stocked there at his request. Similarly the Exh.46 the Taluka Register of Rents does not prove that th mill was rented to Government. Simply because the n name of the mill was included in this Register it does not conclusively prove that it was so rented to Government. The very fact that no amount was sho as rent in the Register is enough to show that the same was never rented to Government. Besides there is no evidence to support the inference drawn by th Court in this regard.

For these reaosns, I recommend that an appeal should be filed from the said decree and judgement

If the appeal is to be filed, I should receiv the papers at least on or before 25.9.1951.

Certified copies of judgement and decree and the case papers (case papers ~~received from~~ received from the S.G.P. Hubli) are sent herewith.

5337

Civil Appeal No. of 1951.

6

In the Court of the District Judge, Dharwar, at Dharwar.

Appellant :- The State of Bombay,

Versus.

Respondent :- Shri. Shirniwas Narayan Chinmulgund, Age 48, Occupation trader, residing in Hangal, Taluka Hangal.

Claim Rs.300/-

The appellant being aggrieved by the judgement and decree passed by Shri.B.A.Chougule, Civil Judge, Senior Division, Hubli, on 14.8.1951, in L.C.Suit No.169 of 1950 begs to prefer an appeal therefrom for the following among other grounds :-

1. The decision of the lower Court is contrary to law, evidence and equity.

2. The lower Court ought to have decreed the suit in toto in favour of the appellant-plaintiff with full costs.

3. The lower Court ought to have held that there was no evidence to show that the mill was repaired and was given exclusive possession to Government for storage purposes.

4. The lower Court ought to have given findings on issues 1 and 2 in favour of the plaintiff.

5. The lower Court was wrong in holding that the plaintiff stored corn etc., in the suit property for 15 months and therefore the defendant is entitled to claim rent for that period.

6. The lower Court has misconceived exhibits Nos.38,41,42,43, and 46 and drawn inferences without any evidence to support them.

7. The lower Court ought to have held that the defendant did not carry out suitable repairs and his premises were not suitable for use as a godown for storing food-grains and therefore they were never taken on lease by Government.

8. The lower Court ought to have held that the stock of paddy was taken by the defendant himself in his mill premises and the plaintiff did not use the premises as a godown on lease.

9. The lower Court was wrong in inferring the suit premises were let to defendant merely because the name of the mill is entered in Exh.46.

10. The lower Court ought to have held that the mill was not let as no rent was shown in Exh.46.

11. The lower Court was wrong in holding that the plaintiff used the mill without fixing rent. It ought to have held that as it was not so used the rent was not fixed.

P.T.O.....

12. The lower Court ought to have held that the building was not used by the appellant for storage purposes nor was it leased in view of exhibits Nos.3 and 4.

13. The lower Court ought to have held that paddy was not stored in the mill but was issued by him for milling purposes and as such no rent was payable.

14. The order as to costs is wrong.

15. The infererences drawn and the presumptions made by the lower Court are all wrong.

On these among other grounds to be pressed at the time of hearing it is prayed that the preliminary decree of the lower Court in disallowing the claim of Rs.300/- be reversed and this appeal be allowed with costs through-out.

Drafted and Presented

By

Asstt. Govt.Pleader,Dharwar.

Dharwar.
Dated 26th Sept,1951.

b.

395

Suits
Dharwar (Hubli)
For recovery of Rs. 364-13-0 from the defendant.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 17918

Bombay Castle, 12th November 1951.

Read Government Resolution, Legal Department, No. 9509, dated the 7th July 1950.

Letter from the Subordinate Government Pleader, Hubli, No.86, dated the 16th August 1951 stating that the suit noted in the margin was decided by the Civil Judge (Senior Division) Hubli on the 14th August 1951 when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli
Civil Suit No. 169 of 1950

The State of Bombay - - - - - - - - Plaintiff.
Vs.
Shri Shrinivas Narayan Chinmulgund - Defendant

> "It is declared that the plaintiff is entitled to recover Rs. 109-13-0 and proportionate costs of the suit from the defendant who shall pay future interest at 4 per cent per year on the amount of Rs. 109-13-0 or the unpaid part thereof from date of suit till realisation. Time for 6 months is allowed to the defendant to pay the amount. A preliminary decree for sale should be drawn up. The defendant shall bear his costs."

Letter from the Subordinate Government Pleader, Hubli, No.97, dated the 31st August 1951 forwarding copy of judgment and recommending the institution of an appeal.

Letter from the Collector of Dharwar No. WARAC/Chimulgund/1473, dated the 15th October 1951 requesting sanction for filing an appeal

RESOLUTION:- Sanction is accorded to the institution of an appeal in the Court of the District Judge, Dharwar against the decision of the Civil Judge (Senior Division), Hubli dated the 14th August 1951 on the lines of the brief accompanying Government Resolution, Legal Department, No. 9509, dated the 7th July 1950

By order of the Governor of Bombay,

original

R. T. Katarki,
Deputy Secretary to Government.

To
The Civil Supplies Department,
The District Magistrate, Dharwar,
The District Government Pleader, Dharwar,
The Subordinate Government Pleader, Hubli.

Subd for Sign
D.S. (Civil)

G+41

S. No. 51 - the Dy
Mr. Col came with the
the during the 2nd week
of June 1952

Civil Appeal No. 316 of 1951.

In the Court of the District Judge,
At Dharwar.

Shri. R.V.Jathar. Appellant:- The State of Bombay.
Pleader.

Versus.

Respondent:- Shri. Shriniwas Narayan Chinmulgund, 48, trad
residing in Hanagal Taluka Hangal.

Claim Rs. 300/-.

Typed by
S. C. Halli.

Typing charges
Rs:- 12-0-0

Grounds of Appeal.

1. The decision of the lower Court is contrary to law, evidence and equity.

2. The lower Court ought to have decreed the suit in toto in favour of the appellant-Plaintiff with full costs.

3. The lower Court ought to have held that there was no evidence to show that the mill was --- repaired and was given exclusive possession to -- Government for storage purposes.

4. The lower Court ought to have given findings on issues 1 and 2 in favour of the Plainiff.

5. The lower Court was wrong in holding that the Plaintiff stored corn etc. in the suit property for 15 months and therefore the defendant is entitled to claim rent for that period.

6. The lower Court has misconceived exhibits Nos. 38, 41, 42, 43 and 46 and drawn inferences without any evidence to support them.

7. The lower Court ought to have held that the defendant did not carry out suitable repairs and his premises were not suitable for use as a godown for storing food-grains and therefore they were never taken on lease by Government.

8. The lower Court ought to have held that the stock of paddy was taken by the defendant himself in his mill premises and the Plaintiff did not use the premises as a godown on lease.

9. The lower Court was wrong in inferring that the suit premises were let to defendant merely

because the name of the mill is entered in Exh. 40

10. The lower Court ought to have held that the mill was not let as no rent was shown in Exh.46.

~~11. The lower Court ought to have held that the mill was not let as no rent was shown in Exh. 46.~~

11. The lower Court was wrong in holding that the Plaintiff used the mill without fixing rent. It ought to have held that as it was not so used the rent was not fixed.

12. The lower Court ought to have held that the building was not used by the Appellant for storag purposes nor was it leased in view of Exs. Nos. 39 and 40.

13. The lower Court ought to have held that paddy was not stored in the mill but was issued to him for milling purposes and as such no rent was payable.

14. The order asto costs is wrong.

15. The inferences drawn and the presumpt-ions made by the lower Court are all wrong.

On these among other grounds to be pressed at the time of hearing it is prayed that the -- preliminary decree of the lower Court in disallowing the claim of Rs. 300/- be reversed and this appeal be allowed with costs throughout.

Dharwar,
26-9-1951.

Drafted and presented
by
Sd,. R.V. Jathar.
Assistant Government Pleader,
Dharwar.

Received on 16-6-1950.
Registered on 16-6-1950.
Decided on 14-8-1951.
Duration:- 1 year, 1 month an d 28 days-

In the Court of the Civil Judge, S.Dn.,
At Hubli. Exh. 47:
L. C. Civil Suit No. 169 of 1950.

Pleaders.
Shri. Mathad B.R. State of Bombay ..... Plaintiff.
Versus.
" Bhandiwad V.N. Shri. Shriniwas Narayan Chinmulgund, age 48, occupation trade, residing in Hangal taluka Hangal. ..... Defendant-

Claim Rs. 409-13-0.

The Plaintiff sues to recover Rs. 409-13-0 and costs of the suit and future interest from the deft and if he fails to pay the same, to get the amount by sale of the mortgaged property and to get the - balance if any, from the person of the defendant.

He states that the defendant is the proprietor of Shri. Krishna Rice Mill at Bammanhalli Taluka Hangal district Dharwar, and he borrowed Rs. 2,000/- from the Plaintiff for repairing the suit mill and the amount was sanctioned by the Collector of Dharwar on 22-12-1945 subject to the conditions that the - advance amount would be charged with interest at 4 per cent per year and that after repairs the mill --- buildings would be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain and that

45 65

the amount payable as rent would be adjusted towards the interest and principal of the loan and that the amount remaining after adjustment would be refunded within one year from the receipt of the amount or before the supply scheme was closed whichever event took place earlier and that the bond embodying these conditions should be registered at the cost of the defendant and that defendant agreed to these conditions and executed a registered deed of mortgage regarding the suit property on 12-1-1946. The Plff says that the defendant did not carry out suitable repairs and his premises were not suitable for use as a godown and therefore they were never taken on lease by Government or used for storage purposes - and that the defendant repaid a sum of Rs. 1635-3-0 and he was to pay Rs. 364-1-3 and interest and he did not do so although a notice was given to him on 26-6-1948 and therefore the Plaintiff has filed the suit to recover the amount of Rs. 409-13-0 and costs and future interest and the cause of action arose on 12-1-1947.

The defendant states at Exh. 8 that he executed a mortgage deed to Plaintiff regarding the mill belonging to him at Bommanhalli called the "Shri. Krishna Rice Mill". He says that it was agreed between the parties that the Government were to use the building for keeping bags and the amount of rent to be paid by them was to be deducted in the amount of the mortgage and the Government have kept rice and paddy bags belonging to them in the building in the years 1946 and 1947 and the Government have used the building and therefore they are bound to pay the rent to the defendant, and that amount is in excess of what the defendant is to pay Plaintiff as stated

in the plaint and therefore he is not to pay any money to the Plaintiff. He states that he effected repairs in the building and the mill was used as a godown by Government and it was fit to be used as a godown and it is not a fact that the Government did not use the building as a godown. He says that it is not a fact that the building was not useful for keeping bags of Government, He says that about 8,000 bags of paddy belonging to Government were milled in his Mill in the year 1946 and the Government used the property for storing those bags and that in the year 1947 about 1500 bags of paddy were milled and the Government used the property for keeping those bags there. He says that he applied to the Collector, Dharwar regarding rent of the building and he did not take the necessary steps in the matter. He says that the facts stated above should be considered and the suit be dismissed with costs.

On these contentions the following issues are raised :-

1. Whether defendant proves that he effected the necessary repairs as per the mortgage deed ?

2. Does he prove that he had let the godown to the Government for storage of grain ?

3. Whether defendant can plead satisfaction ?

4. If so, is the alleged satisfaction proved ?

5. What if any, is due to Plaintiff ?

6. What decree ?

A n s w e r s :-

1. Yes.

2. Yes.

3. Yes.

4. 300 rupees.

5. Rs. 109-13-0

6. As given below.

Reasons.

The statements of Shriniwas Exh. 19 and Malkap Exh 36 are recorded in the case for the defendant and the Plaintiff has not adduced any oral evidence.

The admitted facts of the case are-that the defendant is the owner of Shri. Krishna Rice Mill Bommanahalli and he executed a mortgage deed reg. that property on 12-1-1946 to the Plaintiff for --- Rs. 2,000/-. It is stated in the deed Exh. 38 that defendant should pay interest at 4 per cent per year on the amount and the amount was to be paid within one year from the date of the deed and the - defendant was to be in possession of the property and after the property was repaired the defendant was to retain a portion of the building sufficient for the mill and he was to give the remaining property to government for storing corn or rent and the Govern -ment was to deduct the amount of rent in the amount due to Government for principal and interest and the defendant agreed to pay the balance within the --- period agreed between the parties. It was further - stated there that if the Supply scheme was given up by Gov ernment earlier the defendant was to pay the amount due to Government when that scheme was closed and if any money remained due to be paid to - Gov ernment the Government was to sell the property and to recover the dues and if a balance still remained the defendant agreed to pay the same on his personal responsibility.

The case of the defendant is that he repaired the building and gave it to Government for storing corn and that a large quantity of corn was kept in the suit building in the year 1946 and for about three months in the year 1947 and that rent for 15 months was due to him and the rent was not fixed by Govt. and therefore the amount due to him was more than what the Government claimed in this suit and therefore the suit be dismissed with costs. It is stated for Government that the defendant did not effect the necessary repairs and therefore the building was not fit to be used as a godown and therefore the Government did not use the building as a godown and after deducting the amount repaid by the defendant the amount as claimed is due from the defendant and therefore they gave a notice to the defendant and the suit was filed. The notice is at Exh. 39. The defendant called upon the Government to produce certain books kept by Government and they are at Exs. 41,44, 43, 42 and 46. Exh. 41 is from 1-10-45 and therein we find that accounts of big paddy, small paddy, big rice, small rice and broken rice are written. There are certain Mills stated there and the suit mill is also shown there. The quantity of big paddy kept in suit property on 12-1-46 was 2607 bags and on 28-8-46 the bags were 143 and 121 Lbs. As regards the small paddy the stock on 12-1-1946 was 367 bags and on 14-10-46 it was 5 bags. As regards big rice the stock was 39 bags on 18-1-46 and it was 380 bags on 16-10-1946. The stock of small rice was 52 bags on 6-6-46 and 2 bags on 18-10-46. The stock of broken rice was 1 bag on 18-1-46 and 29 bags on 28-8-46. The minimum number of bags of big paddy as mentioned in this book was 3716 and it was on 15-3-1946. In this book the suit godown is styled as K.R.M.

The maximum quantity of small paddy as seen from - this book was 658 bags. The m aximum quantity of - big rice in Exh. 41 was 1682 bags on 13-8-1946. The maximum quantity of small rice in Exh. 41 is 329 bags on 14-6-1946 and the maximum quantity of broken rice 29 bags. Exh. 41 shows that big paddy was kept in suit godown by Government from 1-10-45 to 28-8-46 and small paddy from 1-10-45 to 14-10-46 and big rice from 18-1-46 to 16-10-46 and small rice from 6-6-46 to 18-10-46 and broken rice from 18-1-46 to 28-8-46. There are varying quantities of these - articles during the period mentioned against every one of the items and that shows that paddy was brough to the suit godown and it was kept there fora pretty long time and it was milled and the rice was also kept there for a pretty long time. Exs. 42 to 44 are for the year 1947 and therein the suit godown is styled as B.M.2. The stock of big paddy on 29-11-46 was 6 bags and it was 50 bags on 7-3-47and the stock of small paddy was 2 bags on 9-12-46 and 42 bags on 2-3-47. The maximum number of bags of big paddy was 925 on 20-2-47 and the maximum number of small paddy bags was 192 on 23-2-47. The accounts for big paddy and small paddy are written in Exh. 44. Exh, 43 is regarding big and small rice. On 16-12-46 there were 39 bags of big rice and on 16-3-47 the stock was 231 lbs. As regards small rice the stock on 10-1-1947 was 42 bags and on 22-3-47, 123 lbs.

Exh 52 shows that it was kept for broken rice and bran and on 26-12-46 the stock in the suit mill of broken rice was 87 bags and on 9-3-47 it was 23 bags and on 23-3-47 there was no stock. There was no stock of small rice and big rice on 23-3-47.

Exh. 46 is the Taluka register of rents --

regarding godowns in the Taluka. At serial No. 12 the suit godown is mentioned. The fourth column has got the heading "Rent sanctioned" and as against the suit Mill no figures are mentioned. That shows that the Collector had not fixed any rent for the building. As the name of the suit building is mentioned in this register it is clear that the suit property was taken up by Government on rent but the rent regarding the same was not fixed between the parties. The Register shows that the rent of various properties mentioned therein varied from Rs. 2/- per month to Rs. 60/- per month. It is stated for the defendant that the rent of the suit property should be held at Rs. 30/- per month and as the property was used by Government for 15 months it should be held that the defendant was entitled to get Rs. 450/- from Government and as the suit claim is for a lesser amount the suit should be dismissed. It is stated for the Plaintiff that the defendant used to take a large number of paddy bags for milling and as he could mill only a few bags per day it was necessary for him to keep a large number of bags in stock and therefore it cannot be said that the Plaintiff took up the suit property on lease. It is stated for the defendant relying on Exs. 41 to 44 and Exh. 46 that the Plaintiff had kept a large quantity of articles belonging to Government in the suit building and that it is not possible for any person to keep so many bags for a such a long time if the Plaintiff had not taken up the property on lease. It is also seen that the property is mentioned in the rent register Exh. 46 and that proves conclusively that the property was leased by defendant to Plaintiff. It is stated for the Plaintiff that the defendant was to effect repairs and he was to keep the portion

required for his Mill for himself and he was to give the remaining site to the Plaintiff for storing corn and that the defendant did not separate the two - portions. It is stated for defendant that the suit property is a big hall wherein there is the mill on one side leaving the remaining portion as open site where it appears the articles were kept. It is nowhere stated in the mortgage deed Exh. 38 tha there should be a partition wall between the portion occupied by the Mill and the portion to be used as a godown. The Government have been keeping their --- articles in the suit property all along and they never stated to the defendant that he did not effect repairs to the suit property. Therefore I find that the defendant effected the necessary repairs and tha the defendant leased the godown to Government for storing grain and that the defendant can plead - satisfaction because it is stated in the mortgage deed Exh. 38 that the rent of the suit property was to be deducted in the amount of principal and interest. It is in evidence that the Plaintiff - stored corn etc. in the suit property for 15 --- months and therefore the defendant is entitled to claim rent for that period. The ordinary method of fixing the rents by Government is to approach - the P.W.D. authorities to say as to what would be the reasonable rent regarding the building to be taken up on hire. In the present case it does -- not appear that the Collector or other officer of Government followed such a course and he has not - fixed the rent for the suit property. The Plaintiff has not adduced any oral evidence in the case. The mortgage deed shows that the suit property was 75 ft. including the walls. In this, a portion was occupied by the Mill. Therefore I think it reasonabl

to hold that the reasonable rent of the property would be Rs. 20/- per month and that the amount of rent due to the defendant would be Rs. 300/- and that deducting this amount the amount due to Plaintiff would be Rs. ~~109-12-0~~ 109--13-0.

Order.

It is declared that the Plaintiff is entitled to recover Rs. 109-13-0 and proportionate costs of the suit from the defendant who shall pay future interest at 4 per cent per year on the amount of Rs. 109-13-0 or the unpaid part thereof from date of suit till realisation. Time for 6 months is allowed to the defendant to pay the amount. A preliminary decree for sale should be drawn up. The defendant shall bear his costs.

14-8-51. Sd. B.A.Chougule.
Civil Judge. S.D.

Exh. No. 13.

Deposition of the defendant.

My name is Shriniwas Narayan Chinmulgund, Brahmin, 49, Trade and Agriculture of Hanagal.

Chief.

I am the proprietor of the Shri. Krishna Rice Mill. I had borrowed from Government Rs. 2,000/- for enlarging

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ths ~~xxxx~~ mill and for its repairs. I had agreed to pay Government interest ~~xxxxxxxx~~ @ 4% and I had agreed to mortgage the mill building to Government and lease it for storing grain. They used the building for 2 years. The rent to be decided by the P.W.D. was to be paid to be paid to me. They did not settle the rent. The Government used the building for two years after the agreement. The bond is duly registered. I have to recover rent for 2 years from Government . I deny that I did not repair the building, or the Government did not use the godown for storing grain. They had stored nearly 8,000 bags in 1946 and 1500 in 1947. Therefore, accounts should be taken.

24-1-50. Sd. S. M. Bhoj.
Civil Judge, S.D.

Again on S.A.:-

My Mill was Godown No. 2. There were 2 godown in Bommanhalli, taluka Hanagal.There are registers in the godown to show that Government kept articles in my Godown. The rent would be about 40 rupees per month. Government kept articles for one year in 1946 and for 3 months in 1947. My Mill is Krishna Rice Mill . The other godown is Vyankatesh Rice Mill. My godown was shown in registers as K.R.M. and the other godown as V.R.M.

L.P.G.2C is consolidated stock register. From L.P.G 2C register it can be seen as to what ~~xxxx~~ stock was there in my godown kept by Government, on any particular day. I applied to the Collector to settle the amount of rent and to deduct the amount in the amoung due. P.W.D. was asked to settle rent. My statement was recorded twice by Mamlatdar regarding rent.

Cross-examination.

I received Rs. 2,000/- to effect repairs to the Mill. After I got money, I repaired the mill. I did not inform the Collector that I effected repairs. There was an oral agreement with Mamlatdar and Collector that they would pay proper rent if the building was repaired. The actual amount of rent was not settled. The goods were in possession of Government. Others never gave any paddy to me for keeping. My mill was 70'x40'. The rice huller was there. There was no separate godown as such. There were 3 Mills in Bommanhalli. There was one rate allowed by Government to all. I do not know if Govt. had any godowns in Hanagal Taluka. Government used to stock paddy in my godown after purchase. They were not kept there only for milling purpose. I have executed the agreement dated 1-3-1946. The agreement relates to Milling paddy. There is no agreement regarding keeping paddy in stock. I admit the terms stated in the agreement. I paid Rs. 1635-3-0 in cash to Government. I have signed on the back of the notice produced along with Exh. 12. I was asked to pay Rs. 364-13-0. I sent a reply orally to Collector when hewas in Hangal. I have got accounts reg. repairs effected by me. I have not produced them. 500 or 600 bags were brought on each day. The stocks used to be there upto 4,000 or 5,000 bags. Government were stocking paddy from January 1946. Government used to lock the mill. When they opened the lock, the milling work commenced. I never put my lock. The stock stated by me was of paddy and rice. Even after paddy was turned into rice, it was kept by Government in my mill. They have kept such articles from 8 to 12 months. They removed them when they

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wanted. I told Collector to deduct the amount of rent in the amount due from me. All the papers are with th Collector. I have informed the Collector and Mamlat--dar both orally and in writing. Bommanahalli is 11 miles from Hanagal. 200 bags of paddy used to be -- milled in 24 hours. The Mill belonged to me. About 4000 bags could be kept in my mill. Gov ernment used to keep all the stock there, There was a simple mortgage. Government was in possession of the site and I was in possession of the Mill. Gov ernment have not given more than 200 bags for milling to me on a particular day. Gov ernment used to keep all the stoc in their possession.

9. I was milling such stock as was given to me by Government and at the time when it was given.

1-8-51. Sd. B. A. Chougule.
Civil Judge, Senior Division.

Exh. No. 36.

Witness No. 2 for the defendant.

My name is Mallappa Dodbasappa, 42, Government service Hanagal.

Chief.

I was a supply accountant in Hangal Mamlatdar's office in the beginning of 1946. Then I was -- transferred to Kalghatgi. This was in September 1946. Defendant had a rice mill at Bommanhalli. It was -

called Godown No. 2 by Government as.Paddy was kept there for milling. L.P.G.2C Registers are stock registers. The book brought by m e today is from October 1945 to August 1946. Defendant's Mill is styled there as K.R.M. As against K.R.M. the stock o f Gov ernment in paddy and rice is mentioned. There were 2 registers of rice small and big. I see the 2 Registers shown to me. They are for 1946-47. One ~~it~~ is of big rice stock. B.M.2 and B.M.1 are the Godowns- B.M. ~~xxxxxxxx~~ is Bommanhalli. There is stock as against B.M.2, regarding big rice, paddy and small rice. There were 3 registers- one for big and small rice, the other for paddy and the third is for broken rice.~~xx~~ Ghodke gave his mill in possession of Government by by putting a partition wall. I again say he gave a separate in possession of Govt. and rent was paid for that room, used as a godown.

Cross.

Defendant did not give any separate room in possession of Gov ernment for using as godown. The stock was kept in defendant's mill for milling purposes. Paddy in large quantities was stocked at the request of defendant in order that he might get the milling charges. There was competition between the 3 mills. Therefore, large stocks were retained by defendant. If a separate room is given, rent was to be given. Defendant never gave exclusive possession of any portion of the mill to Government.Government took possession of a room of Ø Ghodke's mill in 1946. There was a proposal for rent to Collector and later on it was approved.

No re-examination.

To Court.

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I do not know if Collector ordered in 1946-47 to distribute paddy equally for milling.

1-8-51. Sd. B. A. Chougule.
C. J. S. Dn.

R o z n a m a.

In the Court of the Civil Judge, Senior Division, At Hubli.

L. C. Suit No. 169 of 1950.

The State of Bombay. ..... Plaintiff.

Vs.

hreeniwas .....Defendant.

Claim Rs. 409-13-0.

0.		Before Shri. S. M. Bhoj. C.J.S.Dn., Hubli.
	1.	Plaint present by Shri. Mathad pleader.
	2.	Vakalat.
	3.	Address of Plaintiff filed.
13-7-50.	4.	Summons for S.I. issued to deft and sent to Haveri Court for service.
10-8-50.		Called on this day. Adjourned for return of Exh.4. 1/9/50

Sd. C. J.

1-9-1950. Called on this day.

5. Vakalat of Shri V. N. Bhandiwad pleader for defendant filed.

6. His application for time to file W.S.

Adjourned for w.s. of deft. 22-9-50.

Sd. S. M. Bhoj.

C. J. S.Dn.

22-9-50. Called on this day.

7. Endorsement of Shri. R. B. Waded pleader for Mr. V. N. Bhandiwad. filed.

✓ 8. W.S of defendant put in by his pleader read and recorded.

9. Address of defendant is filed.

Adjourned for production of documents and issues on 10-10-50.

Sd. S. M. Bhoj.

C.J. S. D.

10-10-50. Called on this day. Pleaders on both sides are present.

10. Endorsement is filed.

Pleaders on both sides are heard and as the Court wanted to examine the deft who was absent today and hence the Court passed the following order.

11. Order of the Court that the deft should be kept present.

On the oral request of the Pleaders on both sides the suit is adjourned.

Adjourned for above on 24-10-50.

Sd. S. M. Bhoj.

C.J.S.Dn.

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24-10-50. Called on this day. Pleaders and parties -- on both sides are present.

12. List with two papers ~~xxx~~ put in by the pleader for Plaintiff is filed.

Pleaders on both sides stated their cases one after another again.

Defendant is examined by the Court on S.A.

13. Deposition of defendant Shriniwas Narayan Chi Chinmulgund on S.A. with English notes.

Pleaders are heard again and pleadings are read and issues are framed and read out to pleaders.

14. Issues.

Adjourned for list of witness

18-11-50.

Sd. C. J.

18-11-50. Called on this day Pleaders on both sides are present.

15. First list of witnesses put in by the pleader fkr defendant requesting to issue witness summons to them is ordered as prayed.

No list of witnesses is put in by the -- pleader for Plaintiff.

27-11-50. 16. Witness summons to witness No. 1 issued and sent to Collector, Dharwar.

17. Witness summons to witness No. 2 issued and sent to Mamlatdar Hangal.

18. Do do sent to Mamlatdar Haveri.

Sd. Karkun.

21-12-1950. Called on this day. Pleaders and --

parties on both sides are present. Exh. 17 and Exh. 18 are received duly served. One witness at Exh. 17 is present. A telegram from the Mamlatdar is received that -- Joglekar cannot be sent on account of inspection of that office.

9. List with 16 Register books produced by the witness a clerk from the Hangal Mamlatdar Office shri. L.H.Sankannavar is filed.

The hearing of this suit is adjourned on account of the Inspection of this Court.

The attendance certificate to the witness at Exh. 17 B given to him and his endorsement is taken below Exh. 19 to that effect.

Adjourned for hearing on 16-1-1951.

Sd. C. J.

23-12-1950. 20. Application by the Pleader for defendant requesting to issue witness summons to the wit--nesses mentioned therein ordered accordingly.

Sd. Karkun.

8-1-1951. 21. Summons to witness No 2 sent to Hangal for service.

22. Summons to witness No. 3 mentioned in Exh. 20 issued to and sent to Haveri for -- service.

Sd. karkun.

16-1-51. Called on this day before C.O.C. as C.J. S.Dn. was on C.L. Pleaders and parties present. Exs. 21 and 22 not received. Mamlatdar Hangalhas sent a wire stating that

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that the registers have not yet been traced.

Adjourned for hearing 9-2-51.

Sd. C.O.C.

9-2-1951. Called on this day. Pleaders on both - sides present. Ex. 21 npt received. 22 received served.

23. Application by defendant's pleader for an adjournment of hearing as his witnessxx has not been served, granted.

Adjourned for hearing 12-3-51.

Sd. C. J.

5-3-51. 24. Witness summons as per Exh. 23.

Sd. Clerk.

12-3-51. Called on this day. Pleaders and parties present. Exh. 24 not received.

25. Application by deft's pleader for an - adjournment of hearing as his witness - summons Exh. 24 has not yet been received after service granted.

Adjourned for hearing 5-4-51.

Sd. C. J.

5-4-1951. Called on this day. Pleaders on both sides present.

26. Endorsement of Shri. Indi pleader for Shri. V. N. Bhandiwad pleader filed.

27. Application by defendant's pleader request. -ing to adjourn this case and to reissue summons to the witnesses, for the reasons - stated in it granted.

Adjourned for hearing 15-6-1951.

Sd. S.M.Bhoj-

C.J.S.Dn.

15-6-51. Called on this day before Shri. B.A. Chougule C.J.S.Dn., as Shri. S.M.Bhoj retired from service. Pleaders and parties on both sides present, The process clerk has not prepared the witness summons as per Exh.27. Hence the Court ordered to adjourn the case.

Adjourned for hearing. 18-7-51.

Sd. C. J.

~~28-6-51.~~ 28- Witness summons to witness No. 1

29. Do witness No. 2.

Called on this day. Pleaders present.

30. Application by defendant's pleader for adjournment of hearing as his client is sick and to reissue witness summons to his witness, granted.

31. Takid filed.

Adjourned for hearing 1-8-51.

Sd. C. J.

25-7-51. 32. Witness summons issued as per Exh. 30 and given by hand.

1-8-51. Called on this day. Pleaders and parties present.

33. Application by deft's pleader for adjournment of hearing as his witness is not served, rejected.

Defendant's pleader states his case and his evidence . Defendant is further examined below Exh. 13 on S.A.

34. List with one paper put in by Plff's -- pleader at the time of cross-examination

of defendant filed.

35. Draft of agreement passed between Plaintiff and defendant dated 1-3-46 with Exh. 34 exhibited.

36. Deposition of Malkappa Doddabasappa witness No. 2 for defendant on S.A, with E.Memo.

37. List with one book put in by deft's witness M.D.Sidlingappanavar filed.

38. Mortgage bond passed by defendant in favour of Plaintiff for Rs. 2,000/- on 13-2-1946 with Exh. 2 exhibited. exhibited.

39. Notice given by Collector ,Dharwar to deft on 26-8-1948 S.No. 2 with xeh. 12 exhibited.

The Court told to return the registers produced by the Clerk Mamlatdar's office Hangal produced at S.No. 5 to 15 with Exh. 19 as they are wanted by the defendant's pleader. Hence S.Nos. 5 to 15 with Exh.19 are returned to the clerk Mamlatdar's Office Hangal and his signature is taken below Exh. 19, hence they are short.

Defts' ✗ side is closed.

No oral evidence are lead by Plff's pleader.

Adjourned for arguments 3-8-51.

Sd. C. J.

3-8-51. Called on this day. Pleaders present.

✓40. Statement submitted by defendant before the Mamlatdar, Hangal dated 9-6-1948. S.No. 1 wit with Exh. 12 exhibited.

✓41. L.P.G.IIC of Bommanahalli Godown for 1945-46 with Exh. 37 exhibited.

42. Do do of broken rice and bran for 1946-47, S.No. 1 with Exh. 19 do..

43. Do do of big and small rice for do 2 do.

44. Do do of big and small paddy for do 3 do.

45. Do. fo pf Jowar and wheat for do do do.

46. Taluk Register of receipts of Godowns. of Hanagal taluka L.P.G.XVI register dc 16 ko. do.

Plaintiff's pleader began to argue his case.

As the Court's time being over this case is ordered to be adjourned.

Adjourned for arguments 4-8.51.

Sd. C. J.

4-8-51. Called on this day. Pleaders on both sides present.

Arguments heard.

Adjourned for judgment 14-8-51.

Sd. C. J.

14-8.51. Called on this day. Pleaders on both sides present.

47. Judgment.

Papers perused judgment written below Exh. 47read out in open Court.

48. Decree.

Two English notes accompany.

Sd. C. J.

Received on 26-9-1951. 5365

Registered on 28-9-1951.

Decided on 10-6-1952.

Duration - 8 months and 12 days.

In the District Court of Dharwar,

At Dharwar.

Civil Appeal No.316 of 1951 from the decree in Civil Suit No.169 of 1950 of the Court of Civil Judge, Senior Division, Senior Division, of Hubli (Shri. B.A.Chaugule).

Exh. No.11.

Pleaders :-

Shri. B.A.Vahishi, Asstt Govt Pleader.

The State of Bombay -- Appellant (Or. plaintiff)

Versus.

Shri.V.N.Bhandiwad.

Shrinivas Narayan Chinmulgund, of Hangal. -- Respondent (Or. Defendant)

Claim Rs. 300/-

Judgment.

The appellant is the plaintiff,

2. The plaintiff, which is the State of Bombay filed a suit against the defendant who is the proprietor of a rice Mill to recover Rs.2000/- ~~from the defendant~~ and odd on the allegation that the plaintiff advanced Rs.2000/- to the defendant for executing repairs to the Krishna Rice Mill of which the defendant is the owner, upon a mortgage of the said rice mill, with interest at 4 %, that the defendant repaid Rs.1635-3-0 and that the balance of Rs.364-1-3 was due to the plaintiff

together with interest.

3. The defendant admitted the execution of the mortgage deed but contended that there was an additional agreement between the parties that the plaintiff, the Government was to use the rice mill for keeping bags and that the amount of rent payable by Government for keeping the bags in the rice mill of the defendant was to be deducted in the amount of the mortgage. He further contended that according to the agreement the Government had kept rice and paddy bags belonging to him them in the mill of the defendant in the year 1946 and 1947 that the Government used the defendant's rice mill building and that therefore they were bound to pay rent to the defendant. He alleged that the Government used the defend defendant's property for storing 8,000/- bags of paddy in 1946 and 15,000Ø bags in 1947 and that the Government used the property for keeping their bags in the defendant's rice mill.

4. The Civil Judge, S.D., Hubli, held that the defendant had leased his rice mill to the Government for the storage of grains and that therefore he was entitled to a set off of Rs.200/- by way of rent due to him. The Lower Court therefore gave a decree for Rs.109-13-0,only.

5. The State of Bombay have now come in appeal.

6. In appeal it is contended that in the original mortgage it was agreed that the appellant was to use a part of the rice mill of the defendant as a godown only after certain repairs were effected. It is the case of the appellant that these repairs were not effected and that therefore no part of the rice mill of the defendant was used by the plaintiff as a godown. It was however conceded that the appellant had stored thousands of bags

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in the godown of the defendant. But according to the learned pleader for the appellant that the Government gave these bags to the defendant for milling purpose. It is denied by the learned pleader for the appellant that these bags had been stored in the defendant's rice mill as a godown.

7. The learned pleader for the appellant has stated that at the hearing of the suit no oral or documentary evidence has been adduced on behalf of the plaintiff.

8. I agree with the findings of the lower Court and dismiss the appeal for the following reasons :-

9. The execution of the mortgage bond for Rs. ,000 is admitted by the defendant but the only question is whether after the execution of the mortgage bond the plaintiff stored some grain bags in a part of the defendant's rice mill and whether the plaintiff is liable to pay rent for the same.

10. It is conceded by the learned pleader for the appellant that bags had been stored by the Government in a part of the rice mill of the defendant. But it is the contention of the learned pleader for the appellant that such bags were stored both before and after the execution of the mortgage bond. According to him, the storage of the bags by the Government in the rice mill of the defendant was by way of a favour to the defendant in order to give him bags of paddy for the purposes of milling and that they were not stored by the Government by way of storage.

11. When the fact that the bags had been stored

in a part of the rice mill of the defendant is admitted, it is for the plaintiff to pr ve that these bags were not stored by way of storage and that they had been given to the defendant only for milling purposes, to be returned immediately after the milling was done. In the absence of any oral or documentary evidence, the plaintiff's allegation remains as a mere allegation The learned pleader for the appellant has relied upon the evidence of Exh,36 a supply accountant in the Hangal Mamlatdar's office, who was examined as a witness fo. the defendant. He was only a supply accountant and not an executive officer. He only kept accounts of what the executive officers did. In his evidence he has stated that the stock had been kept in the defendant's rice mill for milling purposes. He is obviously referring to what had been done by the executive officers like the supply officer. He does not say that he himself had stored the bags in at the defendant's place. But what he refers to in his deposition is mainly hearsay. He has no personal knowledge of what the executive officers of the Supply Department did. In a case like this, the officer who stored these bags in the godown of the defendant's rice mill should have been examined and clearly it was not the supply accountant (Exh.36) who stored or ordered the storage of these bags in the defendant's mill.

12. In the absence of any oral or documentary evidence, ordinarily the plaintiff' suit should have been dismissed. In this case, however, the lower Court has given a d for Rs.109-15-0 in favour of the plaintiff and there are no cros objections. The finding of the lower Court as regards the quantum of rent is not challanged in appeal.

13. I, therefore, dismiss the appeal with costs.

10th June '52.

Sd/- V.B.Raju,
District Judge, Dharwar.

Decree in Appeal.

In the Court of the District Judge, Dharwar.

At Dharwar.

Civil Appeal No.316 of 1951 from the decree in L.C.Suit No.169 of 1950 of the Court of the Civil Judge, S.D., Hubli, dated 14th of August '51.

Appellant :- (Or. plff) The State of Bombay.

Versus.

Respondent :- (Or. deft). S.N.Chinmulgund, of Hangal.

Claim Rs.300/-

This is an appea; filed by appellant against the decree in L.C.Suit No.169 of 1950 of the Civil Judge, S.D., Hubli, dated 14-8-1951.

This appeal coming on for final ~~disposal~~ hearing on this day 10th June '52, before Shri.V.B.Raju, I.C.S., District Judge, Dharwar, in the ~~presence of~~ presence of Shri.B.A.Mahishi, Assistant Government Pleader, Dharwar, for the appellant, and Shri.V.N.Bhandiwad pleader for the repondent, it is hereby ordered and decreed as under :-

The appeal is dismissed with costs. '

Bill of Costs.

Appellant.		Respondent	
1. Stamps for appeal Memo	28-2-0		
2. do to process	1-4-0		
3. Pleaders fees, (Minimum)	15-0-0	Pleaders fees	15-0-0
4. Stamps & copying fees.	17-5-0		
5. Appeal Book.	12-0-0		
Total	73-11-0		15-0-0

Given under my hand and the seal of this Court this, 10th June, 1952.

Dated

Sd/- V.B.Raju,
District Judge, Dharwar.

Legal Department.

Submitted.

These papers relate to the question whether a second appeal should be filed against the order of the District Judge, Dharwar dated the 10th June 1952 dismissing the appeal with costs filed by the State of Bombay against Shri S.N. Chinmulgund forrecovering Rs. 364-13-0

2. The facts of the case are as follows :-

The Government had brought a suit against the defendant respondent S.N. Chinmulgund of Bommanhalli the owner of the Krishna Rice Mills being the still unpaid balance out of a mortgage loan of Rs. 2000/- advanced by Government to the defendant Chinmulgund. One of the conditions of the loan was that after the Mill was repaired as agreed a part of it should be separated and given to Government for being used as a Godown. No such repairs were made and consequently the Mill or any portion of it wasnnever formally given to the Government for being used as a Godown. The defendant resisted the suit on the ground that Government had used it as a Godown during 15 months in 1946 and 1947 and that therefore Government was liable to allow him credit at the rate of Rs. 30/- p.m. which was reasonable rent for the Godown.

The lower Court held the agreement for lease and the lease also proved as contended for by the defendant and after deducting from the amount claimed by Government Rs. 300/-, the lower Court made a decree for Rs. 109/- and As. 13/-. The Government took an appeal to the District Court being Civil Appeal No. 316 of 1951.

The District Judge, however, did not accept the appellant's arguments but agreeing with the finding of the trial Court dismissed the appeal.

The main question considered and found upon

by the trial Court and confirmed by the appellate Court is the question as to whether the Government had taken the Krishna Rice Mills of the defendant/respondant on lease and whether it had used the same as a Godown. The finding on this question as has been already stated was against the Government. This is essentially a question of fact and there are concurrent findings of both the Courts.

The District Government Pleader, Dharwar is of opinion that no useful purpose will be served by taking the matter to the High Court.

In view of the circumstances stated above, this does not appear to be a fit case for going in Second Appeal to the High Court.

NB
21/7/52
Sd (M)

The Govt of Bombay had advanced a loan of Rs 2000 to the owner of the Shri Krishna Rice Mill on a mortgage of the Mill premises. There was a condition in the mortgage bond that a portion of the premises should be repaired and then let out to the Govt for storing bags of corn, and there was also provision for crediting the rent towards the reduction of the mortgage debt. The mortgagor paid about Rs 1635 and the Govt had filed this suit against the mortgagor for recovering the balance of Rs 409 still due, by sale of the mortgaged property. The defence was that part of the Mill had been let out to the Govt for storing bags of corn, although no rent was fixed for the same. The deft claimed credit for rent at the rate of Rs 30 per month.

The Govt contended that the deft had not carried out any repairs and had not let out any portion of the premises for storage of bags. However it was proved from the Books and Rent Registers maintained by the Govt. that hundreds of bags of corn had been kept in the Mill premises for long periods. The Govt contended that these bags had been sent to the deft for millimg. But this was not proved by any evidence. The trial Court allowed deduction of rent at the rate of Rs 20 per month and passed a decree for the balance of Rs 109 and costs in proportion. The Govt filed an appeal to the District Court, But it was dismissed by the District Judge on 10-6-1952.

The question is whether a Second Appeal should be filed in the High Court against that decision. The D.G.P. has expressed the view that no secind appeal may be filed.

It seems to be proved beyond doubt that hundreds of bags were kept in a portion of the Mill premises for long periods. No evidence was available to prove that so many bags were sent to the defts Mill for milling paddy . The Govt had thus used a portion of the Mill premises for storage of bags, and it is right and proper that the Govt should pay reasonable rent for the same.

The decision seems to be proper, and there is no point of law for filing a second appeal. The decision may be therefore acquiesced in.

SRA
21/7

M.L.A. I agree
21/7

Received in C. S. D. Br.
22/7/52
with file
2350 CSD

Secy. Civ. Sup. Dept. 23/7

X No. 12049 G
22-7-1952.

Suits.
. Dharwar (Hubli)
For recovery of Rs. 364-13-0 from the defendant.

GOVERNMENT OF BOMBAY,
Legal Department
Resolution No. 14941-E
Bombay Castle, 12th September 1952.

Read Government Resolution, Legal Department No.17918, dated 12th November 1951.

Letter from the District Government Pleader, Dharwar, No. 557, dated the 7th July 1952, stating that Civil Appeal No. 316 of 1951 in the suit noted in the margin was decided by the District Judge, Dharwar, on 10th June 1952, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Hubli.
Civil Suit No. 169 of 1950
The State of Bombay..... Plaintiff;
vs.
Shri Shrinivas Narayan Chinmulgund.... Defendant.

"I therefore dismissm the appeal with costs."

Letter from the District Government Pleader, Dharwar, No. 584, dated the 11th July 1952, forwarding uncertified copies of the judgment and decree and stating that no useful purpose would be served by filing second appeal.

RESOLUTION: The result of the appeal is recorded.

By order of the Governor of Bombay,

original

R.T. KATARKI,
Deputy Secretary to Government.

To

The Civil Supplies Department,
The District Magistrate, Dharwar,
The District Government Pleader, Dharwar.

Juned 12/9

Submitted for sign.
11/9
D.S. (Civil)

HSP/10/9

15-76

Suits.
• Dharwar (Hubli)
For recovery of Rs. 364-12-0 from
the defendant.

Gov.Pr. at Bom.
Legal Department
Navigation No.
Bombay Castle, September 1952.

Read Government Resolution, Legal Department No.1781/3
dated 12th November 1951.

Letter from the District Government Pleader, Dharwar,
No. 157, dated
the 7th July 1952.

In the Court of the Civil Judge (Senior Division), Hubli.

Civil Suit No. 169 of 1950

The State of Bombay..... Plaintiff;
vs.
Shrinivas Narayan
Bhirr Lgwad.... Defendant. : Civil Appeal
: stating that
: the 7th July 1952

Dharwar, on 10th June 1952, when the following order was passed :-

"I t refore dismiss the suit with cost."

letter from the District Government Pleader, Dharwar, No. 984, dated the 11th July 1952, forwarding memorandum of reasons of the Judgment and stating that the useful purpose would be served by filing second appeal.

ORDER : The State appeal is dismissed.

By order of the Governor of Bombay,

To

The Civil Judge (S.D.), Dharwar.
The District Government Pleader, Dharwar.
The Civil Judge (J.D.), Hubli.

bsr/ro/s